

4792. Ipecac root. (F. D. C. No. 38051. S. No. 6-873 M.)

QUANTITY: 105 lbs. in 2 drums at Salt Lake City, Utah.

SHIPPED: 3-8-55, from New York, N. Y., by Smith Crude Drug & Spice Co.

LIBELED: 5-24-55, Dist. Utah.

CHARGE: 501 (d) (2)—the article was represented as *ipecac root*, and a substance other than ipecac root had been substituted in whole or in part for the article.

DISPOSITION: 7-29-55. Default—destruction.

DRUGS AND DEVICES ACTIONABLE BECAUSE OF FALSE AND MIS- LEADING CLAIMS*

4793. Diabena. (F. D. C. No. 34916. S. No. 57-490 L.)

QUANTITY: 795 16-fl. oz. btls. and 3 5-gal. btls. at Richmond, Va., in possession of Mrs. W. B. Wood, Jr., t/a C. D. Walker Co.

SHIPPED: On 8-25-50, during November 1950, and on unknown dates, from New York, N. Y.

LABEL IN PART: (Btl.) "Diabena - Alcohol 12½% Active Ingredients Tephrosiavirginiana, Lithii Citras, Cinnamon, Food Coloring. Dose: Two teaspoonfuls every four hours in water. Children in proportion to age. C. D. Walker Co. P. O. Box 1203 Richmond 9, Virginia."

ACCOMPANYING LABELING: Leaflets entitled "Diabena."

RESULTS OF INVESTIGATION: The article was shipped in bulk, and, upon its receipt by the consignee, a portion was relabeled and repackaged into the bottles.

LIBELED: 3-25-53; amended 4-15-53, E. Dist. Va.

CHARGE: 502 (a)—the labeling of the article while held for sale contained false and misleading representations that the article was an adequate and effective treatment for diabetes.

DISPOSITION: Mrs. W. B. Wood, Jr., claimant, filed an answer denying that the article was misbranded as alleged. On 5-8-53, the Government served interrogatories upon the claimant, who filed objections thereto with the court on 5-15-53. The court, after consideration of arguments of counsel, sustained the claimant's objections on 5-27-53. Subsequently, the Government filed a request for admissions to which the claimant objected. The claimant's objections were upheld in part. The case was tried before the court on 9-9-54, and on 3-23-55, the court handed down findings of fact and conclusions of law, holding, in effect, that the Government failed to prove by a preponderance of the evidence that the labeling claims were false and misleading.

The Government filed a notice of appeal to the United States Court of Appeals for the Fourth Circuit; and, on 11-7-55, after consideration of argument and briefs of counsel, the following opinion was handed down by that court:

DOBIE, Circuit Judge: "This case arose on a libel of information filed in the Eastern District of Virginia, under Section 304 (a) of the Federal Food, Drug, and Cosmetic Act, 21 U. S. C. 334 (a), praying seizure and condemnation of an article of drug known as 'Diabena.' The libel alleged that the drug had been shipped in interstate commerce; that certain descriptive literature became associated with it after its interstate shipment; and that it was misbranded and subject to condemnation because this accompanying labeling falsely represented that the drug would be effective in the treatment of diabetes (21 U. S. C. 352(a)).

"After the seizure, Mrs. W. B. Wood, Jr., appeared as claimant and filed an

*See also Nos. 4782-4784, 4788-4790.